UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

ALVIN RAY POE, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	**Civil Action No. 96-S-1332-NE**
	)	
PRC INC., and PRC ENGINEERING SYSTEMS, INC.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

Nineteen plaintiffs[1] filed the instant action against PRC, Inc., a Delaware corporation, and its subsidiary, PRC Engineering Systems, Inc., a Virginia corporation, asserting state law claims for fraudulent misrepresentation and violations of the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 *et seq.* The action now is before the court on defendants' motion for summary judgment. Upon consideration of the pleadings, motion, and evidentiary submissions, the court concludes the motion is due to be granted in part, and denied in part.

I. SUMMARY OF FACTS

Acting through its subsidiary, PRC Engineering Systems, Inc., PRC, Inc. contracted with the Tennessee Valley Authority ("TVA") to provide engineering support services for TVA's Browns Ferry nuclear power generation facility in Limestone County, Alabama. The purpose of the contract was to assist with the preparation of

[1]The plaintiffs are Alvin Ray Poe, David A. Yerdon, Michael J. Hein, Dwight Kilgore, Clifford Long, Ralph Chackal, Gerald S. Patterson, William J. Matthews, Claude A. Partlow, Allen Kinworthy, David J. Lorhman, Robert D. Eckard, Jr., Carol L. Harrison, Larry G. Massey, Jamie Mintz, Robert C. Keener, John H. McCutcheon, Robert L. Smith, and David H. Thigpen.

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federal licensing documentation required by the Nuclear Regulatory Commission.

Plaintiffs allegedly were induced to give up salaried positions with other employers to accept lower-paying jobs with PRC, to assist PRC with its performance of the TVA contract. They contend they did so because they were promised "time and a half" compensation for overtime work—a benefit which apparently rendered PRC's offer superior to their prior employment. Plaintiffs began work on various dates during 1993 and 1994.[2]

Plaintiffs were paid time and a half for hours worked in excess of forty hours a week until April 20, 1994. On that date, PRC stopped paying overtime wages to plaintiffs, alleging that TVA refused to pay overtime rates for so-called "exempt" employees. (Defendants' Exhibit A, Griffin Affidavit ¶ 5.) The term "exempt" refers to employees whose positions are not covered by the overtime provisions of the Fair Labor Standards Act.

Plaintiffs commenced this action on April 17, 1996, asserting two claims: fraudulent misrepresentation; and, violation of the Fair Labor Standards Act. They seek unpaid overtime compensation, interest on those wages, "and an equal amount of compensatory damages for said unpaid overtime wages for Defendants' willful failure to pay the overtime wages, attorneys fees, and all other legal equitable relief" to which they are entitled. (Second Amended Complaint ¶ 11 (Doc. No. 10).)

[2]The precise days on which each plaintiff began his or her employment with PRC are not readily discernible from the record, nor are they pertinent to the court's summary judgment analysis.

II. DISCUSSION

A. Fair Labor Standards Act Claim

As a general rule, the Fair Labor Standards Act requires that employees be compensated at a rate not less than one and one-half times their regular rate for all overtime hours. 29 U.S.C. §207(a)(1). The Act further defines "overtime" as employment in excess of 40 hours in a single workweek. *Id.* That overtime provision does not apply, however, to "any employee employed in a bona fide executive, administrative, or professional capacity ... (as such terms are defined and delimited from time to time by regulations of the Secretary)." 29 U.S.C. § 213(a)(1).

Fair Labor Standards Act exemptions are "narrowly construed against the employers seeking to assert them and their application limited to those establishments plainly and unmistakably within their terms and spirit." *Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388, 392, 80 S.Ct. 453, 456, 4 L.Ed.2d 393 (1960). Further, it is the employer in a Fair Labor Standards Act case that bears the ultimate burden of establishing that its employees fall within the exemption. *See Reich v. Newspapers of New England, Inc.*, 44 F.3d 1060, 1070 (1st Cir. 1995).

Defendants contend plaintiffs are "exempt" from the overtime provisions of the FLSA because they were "employed in a bonafide ... administrative, or professional capacity." 29 U.S.C. § 213(a)(1). The statute does not define those terms. As a consequence, the court must rely upon regulations promulgated by

the Secretary of Labor to determine whether a particular employee is exempt from the Act's overtime provisions. Initially, then, defendants' motion prompts this inquiry: are plaintiffs employed in either an administrative or professional capacity?

1. Administrative or Professional Employees

The regulations outline both a "short" and a "long" test for determining whether an employee qualifies for one of the exemptions. The short test is used when an employee is paid more than $250 per week. *See* 29 C.F.R. § 541.2(e)(2). No party disputes that all plaintiffs were paid in excess of that amount. Thus, the "short test" governs the instant case.

To differing degrees, both the administrative and professional exemptions require defendants to demonstrate that plaintiffs' primary duties included the "exercise of discretion and independent judgment." For the administrative exemption, plaintiffs' primary work need only include those elements. 29 C.F.R. § 541.2(e)(2). For the professional exemption, such work must involve the "consistent exercise of discretion and judgment." 29 C.F.R. § 541.315(a)(emphasis supplied).[3]

a. Work requiring the exercise of discretion and independent judgment

Defendants contend that plaintiffs have each admitted their work assignments were performed independently, with only general

[3]The test also requires the employer to establish that the employees' primary duty consists of "[t]he performance of office or nonmanual work directly related to management policies or general business operations of [the] employer or [the] employer's customers." 29 C.F.R. § 541.2(a). Because the court finds defendants' motion insufficient to demonstrate the absence of a genuine issue for trial as to the "discretion and independent judgment" element, the court need not consider defendants' arguments regarding the "directly related" element.

supervision. (See Griffin Declaration ¶ 2; Defendants' Statement of Undisputed Facts as to Eckard at 9, Hein at 7, Keener at 6-7, Kinworthy at 4, Matthews at 6-7, Poe's at 6, Thigpen's at 8, and Yerdon's at 9.) Defendants further assert that plaintiffs exercised discretion by "(1) evaluat[ing] components on the installed plant equipment; (2) determin[ing] the function of the plant equipment; (3) resolv[ing] inconsistencies in the safety or quality-related classifications of components; and (4) providing written recommendations and justifications for classifying the components as safety-related, quality or non-quality-related." (Defendants' Brief in Support at 21-22 (emphasis in original).)

As already noted, defendants bear the burden of proving that plaintiffs are exempt from the overtime provisions of the Fair Labor Standards Act. On matters as to which they bear the ultimate burden of proof, defendants must establish the absence of a genuine issue of material fact in order to prevail on their motion. Thus, while defendants' assertions are persuasive, they ultimately do not justify summary judgment, because they do not establish the absence of a triable issue on whether plaintiffs are exempt.

Plaintiffs argue their jobs required only the exercise of "skill," not discretion and independent judgment.

> Perhaps the most frequent cause of misapplication of the term "discretion and independent judgment" is the failure to distinguish it from the use of skill in various respects. An employee who merely applies his knowledge in following prescribed procedures or determining which procedure to follow, or who determines whether specified standards are met or whether an object falls into one or another of a number of definite grades,

> classes, or other categories, with or without the use of testing or measuring devices, is not exercising discretion and independent judgment within the meaning of § 541.2. This is true even if there is some leeway in reaching a conclusion, as when an acceptable standard includes a range or a tolerance above or below a specific standard.

29 C.F.R. § 541.207(c)(1). The regulations provide an instructive example.

> A typical example of the application of skills and procedures is ordinary inspection work of various kinds. Inspectors normally perform specialized work along standardized lines involving well-established techniques and procedures which may have been cataloged and described in manuals or other sources. Such inspectors rely on techniques and skills acquired by special training or experience. They may have some leeway in the performance of their work but only within closely prescribed limits. Employees of this type may make recommendations on the basis of the information they develop in the course of their inspections (as for example, to accept or reject an insurance risk or a product manufactured to specifications), but these recommendations are based on the development of the facts as to whether there is conformity with the prescribed standards. In such cases a decision to depart from the prescribed standards or the permitted tolerance is typically made by the inspector's superior. The inspector is engaged in exercising skill rather than discretion and independent judgment within the meaning of the regulations in Subpart A of this part.

29 C.F.R. § 541.207(c)(2).

Plaintiffs present convincing evidence that the parameters of their individual work assignments were strictly limited by TVA procedures, and that their jobs did not require the exercise of discretion or independent judgment. For example, Michael J. Hein testified that PRC employees had no discretion to act outside established TVA procedures.

> Q. And you are referring to the independence of action, employees complete assignments independently using established TVA procedures. Do you agree with that?
>
> A. Yes, we used procedures but they were not independent. We had no flexibility.
>
> Q. But, while you ...
>
> A. No evaluation, no ability to deviate from the procedures to do anything on our own to make independent conclusions. We had a procedure that we followed and it was technical. I had to rely upon my technical background. But, the procedure was very specific. And we were to follow the procedure. If there was any questions, we would ask our supervisor.

(Hein Deposition at 102-03.) Plaintiff Dwight Kilgore offered similar testimony.

> Q. I understand the importance of the procedures, Mr. Kilgore. But what I understand you are telling me -- and if I'm wrong, please correct me -- that basically you just follow a checklist for basically everything that you did at the power plant. And there was never an occasion upon which you were required to either make a decision, consider the alternatives, or evaluate information based on your prior technical or engineering background?
>
> A. That's true. That's a true statement.

(Kilgore Deposition at 290-91.) Other plaintiffs offered similar testimony regarding the inflexible TVA procedures governing the performance of work assignments. *See, e.g.*, Chackal Deposition at 287-89 (only exercised discretion in "following prescribed procedures and to determine whether specific standards were met"); Eckard Deposition at 258-59 (exercised no discretion because he "had to use whatever books and procedures they had in place"); Hein Deposition at 103 ("We were never independent. If we had a

procedure, we followed it. If we didn't, we were fired"); Keener Deposition at 68 (none of his work required him to exercise independent judgment or discretion); Kinworthy Deposition at 201-06 (testifying that all decisions were made based only upon guidelines and procedures dictated by TVA); Long Deposition at 336-38 (position with PRC did not require the exercise of independent judgment or discretionary decisionmaking).

Thus, defendants have failed to demonstrate the absence of a genuine issue regarding whether plaintiffs exercised discretion and independent judgment in performing their jobs. Because that fact is material to defendants' primary defense, summary judgment is not appropriate. Moreover, plaintiffs have effectively rebutted defendants' arguments with credible evidence demonstrating the existence of a triable issue.

B. Fraudulent Misrepresentation Claim

Plaintiffs concede in brief that they can produce no evidence to support their state law claims for fraudulent misrepresentation. (Plaintiff's Opposition Brief at 1, n.1 (Doc. No. 56).) Accordingly, those claims are due to be dismissed.

III. CONCLUSION

For the foregoing reasons, defendants' motion is due to be granted in part, and denied in part. An order consistent with this memorandum opinion will be entered contemporaneously herewith.

DONE this 12th day of August, 1998.

United States District Judge